

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. SMITH

Appeal No. 95-2607
Application No. 07/990,098¹

ON BRIEF

Before GARRIS, PAK and WALTZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 4, 6 and 12 and from the refusal of the examiner to allow claim 5 as amended subsequent to the final rejection². The only other claims in the application, which are claims 7

¹ Application for patent filed December 14, 1992.

² We observe that the claim 5 amendment has not been clerically processed notwithstanding the entry authorization by the examiner.

Appeal No. 95-2607
Application No. 07/990,098

through 11, stand withdrawn from further consideration by the examiner.

The subject matter on appeal relates to a fluid transfer device which includes a punch made of synthetic resin and having dimensions said to enable the punch to be inserted through a rubber stopper or cap of a tube containing fluid to be transferred such as blood. Further details of this subject matter are readily apparent from a review of illustrative independent claim 1, a copy of which taken from the appellant's Brief is appended to this decision.

The reference relied upon by the examiner as evidence of obviousness is:

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| Hein et al. (Hein) | 2,514,576 | Jul. 11, 1950 |
|--------------------|-----------|---------------|

Claims 1 through 6³ and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Hein.

We refer to the Brief and Reply Brief and to the Answer for a complete exposition of the respective viewpoints advanced by

³ It is not apparent how the device of claim 1 is further limited, in accordance with the fourth paragraph of 35 U.S.C. § 112, by the recitation in dependent claim 6 that "said fluid is blood or blood sera." The appellant and the examiner should address and resolve this matter in any further prosecution that may occur.

Appeal No. 95-2607
Application No. 07/990,098

the appellant and the examiner concerning the above noted rejection.

For the reasons which follow, this rejection cannot be sustained.

As well explained and thoroughly detailed by the appellant in the Brief and Reply Brief, Hein contains no teaching or suggestion concerning the here claimed punch and the dimensions thereof. Further, we completely agree with the appellant that patentee's resilient bulb syringe could not be reasonably considered as even capable of performing a punch function. This incapability is evinced by several aspects of the patent device including the manner in which the nozzle (which the examiner equates to the here claimed punch) readily demounts from the bowl seat (e.g., see lines 42 through 47 in column 2), the angled nozzle embodiments shown in Figures 2 and 3 and the fact that patentee's preferred nozzle is made of resilient rubber (see lines 15 through 17 in column 5), all of which militate against a punching function.

In short, a mature and objective study of the Hein patent reveals that patentee's resilient bulb syringe is the type of syringe that is used for irrigation purposes rather than a hypodermic syringe used for injection purposes. Thus, we find

Appeal No. 95-2607
Application No. 07/990,098

nothing and the examiner points to nothing in this patent evidencing a punch capability of any kind. On the other hand, we find in the patent disclosure a significant quantity of evidence that Hein's device would be incapable of performing any type of punching function.

For the reasons set forth above and in the briefs, it is clear to us that the examiner's § 103 rejection of claims 1 through 6 and 12 over Hein is improper and cannot be sustained.

The decision of the examiner is reversed.

REVERSED

| | | |
|------------------------------|---|-----------------|
| BRADLEY R. GARRIS |) | |
| Administrative Patent Judge) |) | |
| |) | |
| |) | |
| CHUNG K. PAK |) | BOARD OF PATENT |
| Administrative Patent Judge) |) | APPEALS AND |
| |) | INTERFERENCES |
| |) | |
| THOMAS A. WALTZ |) | |
| Administrative Patent Judge) |) | |

Appeal No. 95-2607
Application No. 07/990,098

Appeal No. 95-2607
Application No. 07/990,098

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Appeal No. 95-2607
Application No. 07/990,098

APPENDIX

1. A fluid transfer device comprising a receptacle formed by resilient sides defining a reservoir and an opening, a punch made of synthetic resin with a central passage, and connecting means to retain said punch on said receptacle and align said central passage over said opening, said punch having walls defining said central passage, said punch having a distal end with a minimum diameter of approximately .045 inches, a maximum diameter of approximately .090 inches and said central passage having a minimum diameter of approximately .015 inches and said wall having a minimum thickness of approximately .015 inches.